

CONDITIONS FOR MODIFICATION OF THE AUGUST 2003 AQUARIA INTERBASIN TRANSFER ACT APPROVAL

All conditions of the August 2003 Water Resources Commission Approval for the Aquaria Regional Desalinization Project (attached) still apply. In addition, the following conditions apply to Aquaria's proposed project modification:

1. Although the 2003 WRC Decision on the project as a whole was based on a transfer of 10 mgd of finished water, this approval for the modification of the fishery exclusion system is based on the design provided by the proponent, which only addresses a system needed to withdraw a quantity of water necessary to produce an equivalent of 5 mgd of finished water. If Aquaria expands the plant to produce 10 mgd of finished water, it must return to the WRC with an updated design of its fishery exclusion system and demonstrate that the system will work as proposed and will not cause unacceptable environmental damage.
2. Aquaria will carry out operational monitoring as required by the August 2003 WRC Approval for the Aquaria Regional Desalinization Project, which states "Aquaria shall perform operational monitoring for a period to be decided upon based on results of the monitoring program." (Condition 6 of Criterion #5).
3. Aquaria has submitted a draft Operational Fisheries Monitoring Plan for the Filtrex Filtration System. WRC and agency staff have reviewed and provided comments. Aquaria will work with the agencies in order to modify the plan so that it meets with the agencies' approval.
4. Operational monitoring will be conducted according to the modified plan after it has been approved by the WRC and appropriate agencies. (See Condition 6 of Criterion #5 of the August 2003 WRC Approval for the Aquaria Regional Desalinization Project, which states: "Any changes to the operational monitoring plan must be approved by the WRC and the appropriate state agency(ies).")
5. The monitoring plan shall contain (in addition to other comments that will be provided by the agencies) protocols to be followed in the case of an upset (as defined in the monitoring plan) including immediate (within 12 hours) notification of the appropriate agencies.
6. Aquaria will provide an interim report, to be developed after six months of operational monitoring, to WRC Staff, DMF, DEP and CZM. Data should be provided electronically (Excel spreadsheets). After review of this interim report, the agencies or WRC may require modifications to the monitoring plan if warranted.
7. Annual reports will be furnished to the agencies as required under Condition 5 of Criterion #5 of the August 2003 WRC Approval for the Aquaria Regional Desalinization Project. Data should be provided electronically (Excel spreadsheets).
8. After the first year of operational monitoring, Staff will give a presentation to the Water Resources Commission (WRC) and the WRC will determine if the Filtrex system is operating as originally described.
9. If the Filtrex is not operating as described to the WRC by Aquaria's representative in January 2008 and in supporting documentation provided by Aquaria, Aquaria will either deploy the fisheries exclusion system approved in 2003 (Gunderboom) or will shut down operations until a feasible technical solution can be found that meets with approval from the WRC and appropriate state agencies. The WRC, through EEA and appropriate agencies, will determine whether Aquaria will be allowed to continue to operate as the Gunderboom system is being deployed.

From:

WATER RESOURCES COMMISSION FINDINGS

Compliance with the Environmental Criteria Of the Interbasin Transfer Act Aquaria Regional Desalinization Project

August 14, 2003

CONDITIONS OF THE FINDINGS

Based on the analyses and concerns expressed about this project, the WRC requires that the approval of Aquaria's application under the Interbasin Transfer Act to develop a regional desalinization project be subject to the following conditions. In addition, Aquaria must obtain and abide by all other permits and approvals for this project and potential customers must complete the NPC process with MEPA, and demonstrate to the WRC that it is in compliance with the applicable water supply management criteria. Aquaria must agree in writing to abide by the conditions of this approval.

In order to fully comply with Criterion #2, that all reasonable efforts have been made to identify and develop all viable sources in the receiving area of the proposed interbasin transfer, Criterion #3, that all practical measures to conserve water have been taken in the receiving area, Criterion #4, a comprehensive forestry management program which balances water yields, wildlife habitat, and natural beauty on watershed lands presently serving the receiving area and under control of the proponent has been implemented, and Criterion #7, that the community has adopted or is actively engaged in developing a local water resources management plan:

Aquaria cannot sell water to any customer, until the customer has completed the NPC process with MEPA, and demonstrates to the WRC that, depending upon the amount purchased, it is in compliance with the applicable water supply management criteria.

For the purposes of evaluating the Aquaria project against Criterion #5, that reasonable instream flow in the river from which the water is transferred is maintained (environmental impacts), the WRC has interpreted this to address impacts to the Taunton River Estuary. In order to fully comply with this Criterion:

1. Aquaria must develop a long-term monitoring plan to verify that the design and operation of the proposed project will minimize impacts to fisheries through impingement or entrainment of any fishery at any lifestage. In addition, the monitoring program should verify that the modeling results with respect to salinity are accurate and that the simulated change in salinity will not impact fisheries or habitat as concluded by the environmental agencies. Potential changes in water quality, including turbidity, must be documented through monitoring in order to assess effects on sensitive resources, including Long's Bittercress. The monitoring plan must be approved by the DMF, NHESP, DEP, CZM and the WRC and other agencies, if appropriate, prior to implementing any required monitoring. The proponent is encouraged to develop one monitoring plan, which can be used to

address all environmental permits that regulate impacts to the estuary from this project.

2. A draft monitoring plan must be submitted to DMF, NHESP, DEP, CZM and WRC staff for their review and approval. Elements of the plan must include one year of baseline monitoring to be conducted prior to plant operation, as well as long-term monitoring to be conducted after the start-up of plant operations, for the appropriate parameters (Long's Bittercress, fisheries, salinity and salinity wedge migration, water quality, etc.) and a schedule for reporting monitoring results. Specific details, additional monitoring parameters, observation locations, monitoring schedule and standard operating procedures will be established in conjunction with discussions with the appropriate agencies and WRC staff. These could include trigger or action levels, which if exceeded at any time, require immediate agency notification to determine the actions which should be taken.
3. All monitoring, including the year of baseline monitoring, must be conducted according to the approved monitoring plan.
4. A report shall be prepared at the conclusion of the baseline monitoring period and prior to operation of the plant and submitted to DMF, NHESP, DEP, CZM and WRC staff for review and approval prior to starting operations. Following review of the baseline data:
 - WRC may require changes to the operational monitoring plan;
 - Aquaria may propose revisions to the operational monitoring plan, subject to agency review and approval.
5. All monitoring results must be reported to WRC staff, NHESP, DMF, CZM and DEP, in accordance with the approved monitoring plan, for their review and assessment. Annual reports of operational monitoring shall be furnished to the agencies cited above for review. Modifications to the monitoring or operational plans may be required by the WRC and the appropriate state agency(ies) based on the results of the monitoring. If the monitoring data indicates modeling data were incorrect and adverse impacts that can be related to the operation of the plant and/or the withdrawals or discharges have resulted, then the appropriate environmental permit may be conditioned to mitigate these impacts.
6. Aquaria shall perform operational monitoring for a period to be decided upon based on results of the monitoring program. Aquaria may submit a request for modification of the operational monitoring program when sufficient information exists to support changes. The basis for the proposed modification(s) shall be clearly described and justified. Any changes to the operational monitoring plan must be approved by the WRC and the appropriate state agency(ies).
7. Aquaria shall provide access and allow agency personnel (or delegated parties) to inspect the site to verify conditions of this approval.

In order to fully comply with Criterion #8, the Commission shall consider the impacts of all past, authorized or proposed transfers in the donor basin:

Aquaria must commit in writing to abiding by any restrictions that may be placed on the operation of the desalinization plant as a result of monitoring.